

previously certified by the Administration for payment to other persons (on the same earnings record) are not changed. Rather, the benefit payment of the person filing the application in the later month is reduced for each month of the retroactive period to the extent that may be necessary, so that no earlier payment to some other person is made erroneous. This means that for each month of the retroactive period the amount payable to the person filing the later application is the difference, if any, between (a) the total amount of benefits actually certified for payment to other persons for that month, and (b) the maximum amount of benefits payable for that month to all persons, including the person filing later.

§ 404.407 Reduction because of entitlement to other benefits.

(a) *Entitlement to old-age or disability insurance benefit and other monthly benefit.* If an individual is entitled to an old-age insurance benefit or disability insurance benefit for any month after August 1958 and to any other monthly benefit payable under the provisions of title II of the Act (see subpart D of this part) for the same month, such other benefit for the month, after any reduction under section 202(q) of the Act because of entitlement to such benefit for months before retirement age and any reduction under section 203(a) of the Act, is reduced (but not below zero) by an amount equal to such old-age insurance benefit (after reduction under section 202(q) of the Act) or such disability insurance benefit, as the case may be.

(b) *Entitlement to widow's or widower's benefit and other monthly benefit.* If an individual is entitled for any month after August 1965 to a widow's or widower's insurance benefit under the provisions of section 202 (e)(4) or (f)(5) of the Act and to any other monthly benefit payable under the provisions of title II of the Act (see subpart D) for the same month, except an old-age insurance benefit, such other insurance benefit for that month, after any reduction under paragraph (a) of this section, any reduction for age under section 202(q) of the Act, and any reduction under the provisions described in

section 203(a) of the Act, shall be reduced, but not below zero, by an amount equal to such widow's or widower's insurance benefit after any reduction or reductions under paragraph (a) of this section or section 203(a) of the Act.

(c) *Entitlement to old-age insurance benefit and disability insurance benefit.* Any individual who is entitled for any month after August 1965 to both an old-age insurance benefit and a disability insurance benefit shall be entitled to only the larger of such benefits for such month, except that where the individual so elects, he or she shall instead be entitled to only the smaller of such benefits for such month. Only a person defined in § 404.612 (a), (c), or (d) may make the above described election.

(d) *Child's insurance benefits.* A child may, for any month, be simultaneously entitled to a child's insurance benefit on more than one individual's earnings if all the conditions for entitlement described in § 404.350 are met with respect to each claim. Where a child is simultaneously entitled to child's insurance benefits on more than one earnings record, the general rule is that the child will be paid an amount which is based on the record having the highest primary insurance amount. However, the child will be paid a higher amount which is based on the earnings record having a lower primary insurance amount if no other beneficiary entitled on any record would receive a lower benefit because the child is paid on the record with the lower primary insurance amount. (See § 404.353(b).)

(e) *Entitlement to more than one benefit where not all benefits are child's insurance benefits and no benefit is an old-age or disability insurance benefit.* If an individual (other than an individual to whom section 202 (e)(4) or (f)(5) of the Act applies) is entitled for any month to more than one monthly benefit payable under the provisions of this subpart, none of which is an old-age or disability insurance benefit and all of which are not child's insurance benefits, only the greater of the monthly benefits to which he would (but for the provisions of this paragraph) otherwise be entitled is payable for such month.

For months after August 1965, an individual who is entitled for any month to more than one widow's or widower's insurance benefit to which section 202 (e)(4) or (f)(5) of the Act applies is entitled to only one such benefit for such month, such benefit to be the largest of such benefits.

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§ 404.408 Reduction of benefits based on disability on account of receipt of certain other disability benefits provided under Federal, State, or local laws or plans.

(a) *When reduction required.* Under section 224 of the Act, a disability insurance benefit to which an individual is entitled under section 223 of the Act for a month (and any monthly benefit for the same month payable to others under section 202 on the basis of the same earnings record) is reduced (except as provided in paragraph (b) of this section) by an amount determined under paragraph (c) of this section if:

(1) The individual first became entitled to disability insurance benefits after 1965 but before September 1981 based on a period of disability that began after June 1, 1965, and before March 1981, and

(i) The individual entitled to the disability insurance benefit is also entitled to periodic benefits under a workers' compensation law or plan of the United States or a State for that month for a total or partial disability (whether or not permanent), and

(ii) The Secretary has, in a month before that month, received a notice of the entitlement, and

(iii) The individual has not attained age 62, or

(2) The individual first became entitled to disability insurance benefits after August 1981 based on a disability that began after February 1981, and

(i) The individual entitled to the disability insurance benefit is also, for that month, concurrently entitled to a periodic benefit (including workers' compensation or any other payments based on a work relationship) on account of a total or partial disability (whether or not permanent) under a law or plan of the United States, a

State, a political subdivision, or an instrumentality of two or more of these entities, and

(ii) The individual has not attained age 65.

(b) *When reduction not made.* (1) The reduction of a benefit otherwise required by paragraph (a)(1) of this section is not made if the workers' compensation law or plan under which the periodic benefit is payable provides for the reduction of such periodic benefit when anyone is entitled to a benefit under title II of the Act on the basis of the earnings record of an individual entitled to a disability insurance benefit under section 223 of the Act.

(2) The reduction of a benefit otherwise required by paragraph (a)(2) of this section is not to be made if:

(i) The law or plan under which the periodic public disability benefit is payable provides for the reduction of that benefit when anyone is entitled to a benefit under title II of the Act on the basis of the earnings record of an individual entitled to a disability insurance benefit under section 223 of the Act and that law or plan so provided on February 18, 1981. (The reduction required by paragraph (a)(2) of this section will not be affected by public disability reduction provisions not actually in effect on this date or by changes made after February 18, 1981, to provisions that were in effect on this date providing for the reduction of benefits previously not subject to a reduction); or

(ii) The benefit is a Veterans Administration benefit, a public disability benefit (except workers' compensation) payable to a public employee based on employment covered under Social Security, a public benefit based on need, or a wholly private pension or private insurance benefit.

(c) *Amount of reduction—*(1) *General.* The total of benefits payable for a month under sections 223 and 202 of the Act to which paragraph (a) of this section applies is reduced monthly (but not below zero) by the amount by which the sum of the monthly disability insurance benefits payable on the disabled individual's earnings record and the other public disability benefits payable for that month exceeds the higher of: